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C O N F I D E N T I A L QUITO 002382

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TAGS: [EINV](#) [ECON](#) [EC](#)

SUBJECT: ECUADOR MAY (OR MAY NOT) SEEK TO EXCLUDE OIL AND
MINING CASES FROM ICSID ARBITRATION

Classified By: Classified by DCM Jefferson Brown. Reason: 1.4 b and d
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[¶1.](#) (C) Summary. President Correa, through his legal
secretary, instructed the Foreign Ministry to inform ICSID,

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an arbitration center, that Ecuador would not accept ICSID
jurisdiction for oil and mining cases. The Foreign Ministry
informed Correa that the notification would not protect
Ecuador from oil and mining arbitration cases because its
bilateral investment treaties would prevail. The MFA has not
yet conveyed Correa's request to ICSID, but will do so if
Correa so instructs. End summary.

[¶2.](#) (U) On October 9 a local newspaper published a story that
President Correa's legal secretary sent instructions to
Foreign Minister Espinosa instructing the Foreign Ministry to
inform the International Centre for Settlement of Investment
Disputes (ICSID) that Ecuador would not accept ICSID
jurisdiction for arbitration cases involving natural
resources, notably oil and mining. The article was
accompanied by a copy of the letter to Espinosa, dated
October 3. Per the letter, Ecuador should claim an exemption
under Article 25(4) of the ICSID Convention.

[¶3.](#) (C) On October 23, Mentor Villagomez, Under Secretary for
Economic and Trade Affairs at the Foreign Ministry, informed
EconCouns that the MFA has not yet conveyed Correa's request
to ICSID. He said that the MFA's own analysis is that given
Ecuador's bilateral investment treaties, notifying ICSID that
it intends to exempt itself from arbitration cases for the
oil and mining sector would not have the intended results (in
other words, the MFA believes that Ecuador would still be
subject to ICSID jurisdiction for these cases).

[¶4.](#) (C) Villagomez continued that the MFA's view is that
there is no point of notifying ICSID per the legal
secretary's instructions, since that would not accomplish

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President Correa's objectives and would only reduce Ecuador's
international standing. The only way to remove Ecuador from
potential ICSID cases would be to terminate Ecuador's
bilateral investment treaties, which, according to
Villagomez, Ecuador does not want to do. Furthermore, he
stated that BIT termination would be a slow process, given
that some of Ecuador's BITs could not be terminated for
several years and have continued protection for a number of
years after the BITs are terminated.

[¶5.](#) (C) Villagomez said that MFA has conveyed its views to
President Correa, and that is where the matter stands for the
time being. However, he said that if Correa instructs the

Foreign Ministry to notify ICSID, it will do so.

¶6. (C) Comment. Given his strong nationalist tendencies, Correa clearly resents that oil investment disputes (which he sees an internal Ecuadorian matter) can be subject to international arbitration. For reasons that are not clear, he also seems to have particular animus with respect to ICSID among the various major international arbitration venues. It appears that in this instance, he or his legal advisor thought that they had found an out for Ecuador, and without consulting with the experts instructed his Foreign Ministry to act. It remains to be seen whether the Foreign Ministry, now that it has been brought into the matter, will be able to persuade Correa to drop this idea.
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